

REAL ESTATE AGREEMENT

THIS REAL ESTATE AGREEMENT ("Agreement") is made and entered into on the 8th day of May, 2010, by and between the **CITY OF GARY, INDIANA**, a governmental entity, hereinafter referred to as the "City", whose address is 401 Broadway, Gary, IN 46402, and the **Jackson Development & Marketing Corporation** ("**Developer**"), a Nevada corporation, whose address is P.O. Box 15187, Las Vegas, Nevada 89114, jointly with the **Jackson Family Charitable Foundation**, (DBA:- the **Jackson Family Foundation** ("**Foundation**"), whose address is P.O. Box 15187, Las Vegas, Nevada, 89114.

RECITALS

WHEREAS: Gary, Indiana is the birthplace of Michael Jackson and the Jackson Family. Gary, Indiana is proud of its native son and grieves his loss. Gary, Indiana believes that the development of a Jackson Family Center, including a Jackson Family Museum and Cultural Center as well as a Michael Jackson Performing Arts Center & Concert Hall will be a fitting tribute to the talent and legacy of Michael Jackson.

WHEREAS: The Jackson Family Center, including a Jackson Family Museum and Cultural Center as well as a Michael Jackson Performing Arts Center & Concert Hall will be a place of destination for people of all demographic areas and will enrich the culture of the world and acknowledge the City of Gary as the place where the Jackson Family story began.

WHEREAS: The Jackson Family Center, including a Jackson Family Museum and Cultural Center as well as a Michael Jackson Performing Arts Center & Concert Hall will be an asset to the City of Gary and will be a catalyst for additional economic development.

WHEREAS: The Jackson Family Foundation (the "Foundation") is a non profit foundation established by Joseph Jackson and Katherine Jackson under the laws of Nevada, for the purpose of preserving the legacy of Michael Jackson and continuing his philanthropic work and focus on music, education and performance.

WHEREAS: The Jackson Development & Marketing Corporation, a corporation legally formed in the state of Nevada, with Joseph Jackson, Chairman & CEO, and with Simon Sahouri, President, in collaboration with Katherine Jackson, is proposing the creation and development of a Jackson Family Center to be constructed on the lands described in Exhibit-A to this Agreement. The Jackson Family Center will be designed as a multi-use themed complex to encompass Jackson Family history including a Jackson Family Museum & Cultural Center, a Michael Jackson Memorial Pavilion, and a Michael Jackson Performing Arts Center & Concert Hall. Additionally, the development is planned to have other commercial elements including but not limited to fine and casual dining, retail stores, entertainment, hotel accommodations, theaters, parking, nightlife, and a casino at a future date contingent on obtaining a license. Other elements under consideration include a conference center, renovation of the existing sports stadiums, enhancement of parks, an arboretum, renovation of the golf courses and facilities associated with the courses, and a possible residential component if appropriate. The list of elements to be included in this development will be adjusted and refined through a comprehensive feasibility study and land use planning process to explore master plan program and design concepts to determine the highest and best use of the site. This will be undertaken in a manner that will be sensitive to environmental considerations and responsive to creating a development that is beneficial to the residents and City of Gary. ("**Project**").

WHEREAS: The Jackson Development & Marketing Corporation ("**Developer**") is in the business of real estate development. Developer will engage the services of professionals in various disciplines with proven track records for the following services: Owner's Representative

Development Services, financing, project and construction management, supervision, sales and marketing, and other support and necessary services for the construction, development and ongoing management of real estate projects. Said professionals, companies, and organizations will be reputable entities with experience in projects of this nature and caliber.

WHEREAS: The Project will benefit the City of Gary and its citizens economically and will provide needed employment opportunities.

WHEREAS: The City is the owner of certain improved and unimproved real estate bounded in general on the North by Hwy 80/94, on the South by 35th Avenue, on the East by Broadway, and on the West by Grant Street, described more fully in Exhibit-A, attached hereto and incorporated herein, to be used for this Project;

WHEREAS: This Agreement will facilitate the transfer of the said certain lands and improvements described in Exhibit-A from the City to the Foundation. In return it is anticipated that lands described in Exhibit-A and the certain improvements on these lands will greatly benefit from the Project improvements to be undertaken by the Foundation/Developer. As such it is anticipated that the City of Gary will reap benefits by the creation of a substantial tax base income source accruing to the benefit of the City, and that the Project will bring employment opportunities and potential revitalization to other parts of the City of Gary. The transfer of title of said certain lands to Foundation from the City by instruments further described herein in return for the anticipated benefits described herein are the primary basis for value given and value received under this Agreement exclusive of any actual or projected value of the certain lands and improvements more fully described in Exhibit-A that are the subject of this Agreement;

WHEREAS: City and Developer desire to cooperate to facilitate design and development of the Project by Developer/Foundation as more fully described herein;

WHEREAS: Time is of the essence for the completion of the Project;

NOW THEREFORE, in consideration of the foregoing and covenants herein, the parties hereby mutually agree as follows:

A. RESPONSIBILITIES OF DEVELOPER AND FOUNDATION

1. **Developer and Foundation** affirm that they are in partnership and working in conjunction with Joseph and Katherine Jackson and that Joseph and Katherine Jackson shall be signatories to this and any other agreement, document and/or contract which is prepared and agreed upon in conjunction with the Project herein.
2. **Developer and Foundation** affirm that they have secured the rights of use of the name "Michael Jackson" and use of various images of Michael Jackson from Katherine Jackson and Joseph Jackson, parents of Michael Jackson, who are both in support and agreement with this project.
3. **Developer affirms that** it has close associations with and will engage the required professional services of those who have successfully developed and/or acted in the capacity of Owner's Representative who have developed Projects of a similar caliber in other jurisdictions. Additionally Developer affirms that based on preliminary evaluations, assessments and discussion with financing sources, that financial resources will be available to facilitate undertaking this project through to successful completion,

subject to completion of a comprehensive feasibility study to determine the viability of the proposed Project.

4. **Developer** shall provide City with all financial documentation necessary to establish its ability to fund the Project, including but not limited to a commitment letter(s) from a recognized financial institution(s) that affirmatively states that the required funds are available for this project. This shall be done only after and upon completion of the feasibility study, preparation of a financing package, presentation to financing resources and subsequent receipt of letters of commitment or conditional letters of commitment from the financing resources.
5. **Developer** shall prepare a comprehensive feasibility study and master plan for the entire Jackson Family Center Project within a time period commensurate with the caliber and complexity of the Project allowing for additional contingency time for revisions to the program should the initial feasibility and pro forma financial modeling call for adjustments and value engineering of the Project. Foundation/Developer will proceed with all due diligence to complete the feasibility study within approximately eight (8) months of Close of Escrow for the Transfer of the lands described in this Agreement from the City to Foundation/Developer.
6. **Developer** will make every good faith effort to complete the comprehensive feasibility study within eight (8) months of execution of this Agreement. However, due to the complex nature of the Project and the intent to seek funding from various financing resources including from governmental agencies, Developer reserves the right to add contingency time as needed to complete the feasibility study to the satisfaction of the Developer without further addendums to this Agreement should additional time be required in the judgment of the Developer. Developer will notify City of the progress status of the feasibility study process every thirty (30) days during such times, if any, that additional time may be required. Developer shall notify the City in writing of any election to extend the completion time for the Feasibility Study and shall include a brief summary of justification.
7. **Foundation/Developer** agrees that the Project must be in conformance with the zoning requirements and building ordinances of the City of Gary prior to the Project being approved and permitted for construction. Foundation/Developer will prepare detailed plans and documents as required for submittal for Planning Approval from the City of Gary. The initial approval of the Master Plan shall be completed through an application process as per the codes and ordinances of the City of Gary. Approval of the Project Master Plan and Development Plans shall take the form of a "Development Agreement" between the City and Foundation/Developer that will allow for phased construction of the project, such phasing to be outlined in a preliminary construction schedule to be determined by the Developer and presented as part of the application process. City agrees, subject to City code and ordinances, that the Development Agreement when approved shall also include a provision for flexible parameters applicable to density and height that allows the Foundation/Developer to increase or decrease lot coverage, density, and height from the approved program and designs by 15% through an Administrative Approval Process. The Development Agreement shall include the appropriate "Conditions of Approval" to facilitate Administrative Approval of possible changes within the 15% parameters and to provide specific guidelines for such changes. In the event that proposed changes that fall within the 15% parameter guideline are not able to be made at the Administrative level by the Planning Director based on compliance of the proposed Project plans with the Conditions of Approval and specified 15% parameters, then any additional time required to receive final

approvals as administered through other levels of the approval process shall be added to the start date and/or completion date for any item in this agreement where time is of the essence.

8. **City** affirms that it has reviewed the written description of the proposed Jackson Family Center development as described above in the Recitals section of this Agreement, and is in accord with the proposed development concept. City further affirms that it will utilize its resources whenever possible to expedite the approval and permitting process for the Project. City affirms that the current zoning for the certain lands further described in Exhibit-A attached in general allows for the proposed uses contemplated for the Jackson Family Center and/or the City affirms that it will conduct the necessary due diligence to determine that the current zoning for the certain lands further described in Exhibit A attached allows for the proposed uses once a definitive plan has been presented to the City for review. City affirms that if unforeseen special conditions are required to facilitate approval of aspects of the proposed Project, that the City will help to facilitate approval by available instruments such as drafting and adopting a project specific Ordinance and Resolution granting entitlements to the said Lands and Developer to construct the Project when presented to the City for review.
9. **City** at its expense, upon completion of the Developer's comprehensive feasibility study and master plan for the Jackson Family Center Project may elect to engage an independent third party financial advisor to review the Developer's business plan and financial model. The City will share the results of their analysis with the Developer. However, in the event that the City's financial advisor's conclusions are not in agreement as to viability with the Developer's financial conclusions, and the Developer elects to proceed, the City shall not have any rights to withdraw, retract, or disengage from its responsibilities and obligations under any and all terms and conditions of this Agreement.
10. **Foundation/Developer** agree to abide by all federal, state and local laws and ordinances. The Foundation/Developer agrees to implement the Preferential Hiring Policy outlined below regarding priority or preferential hiring for residents, companies, and businesses in and around the City of Gary.
11. **Developer and City** affirm that it is the intent of both parties that this project benefit the City and its residents by providing for employment opportunities to residents, businesses and companies in the City during development of the project and for the ongoing operations of the Project. To the extents allowable under all applicable laws including but not limited to Federal, State and Local jurisdictions, Developer shall implement a preferential hiring program for construction of the project to engage qualified subcontractors, employees and workers on a first priority basis from residents and businesses located in the City of Gary subject to competitive bidding practices and labor rates. Developer shall require this policy ("the Preferential Hiring Policy") to be applied and implemented by its contractors and subcontractors. The Preferential Hiring Policy shall provide that bidding shall be open to all who wish to submit proposals from anywhere but only those who meet with industry standard qualifications for the required tasks shall be considered as candidates for engagement or employment. Preferential hiring or award of contract shall be given to qualifying residents and businesses from the City of Gary subject also to their proposals and bids being price competitive as determined through an industry standard bidding process. Award of contracts or employment positions shall not alleviate recipients from ongoing industry standard performance requirements for their services. Termination for non-performance shall not require implementation of the Preferential Hiring Policy to replace a terminated worker, business, or sub-contractor as time is of the essence

during construction. Replacement of any terminated party or entity shall be at the sole choice and discretion of the Prime General Contractor and may or may not necessarily be the previous runner up to the first party hired or engaged through implementation of the Preferential Hiring Process. Developer agrees that in the event of a conflict between its Priority Hiring Policy and federal, state and local laws and ordinances, that federal, state and local law and ordinances shall control. Within seven (7) working days of execution of this Agreement, the City shall provide to the Foundation/Developer copies of all pertinent local laws and ordinances referred to herein by the City for review by the Foundation/Developer. The Foundation/Developer reserves as a right of contingency for this Agreement seven (7) working days to review the laws and ordinances, and if they are not in agreement with them to withdraw from this agreement in writing.

12. Engagement of sub-contractors used for and during construction of aspects of the project shall be implemented through a competitive bidding process that meets with applicable requirements and governmental regulations for projects that utilize public funding sources if public funding is utilized for said aspects of the project. Aspects of the project that do not utilize public funding shall not be subject to this requirement.
13. It is anticipated that the Project will be funded through both private funding and public funding. Selection and engagement by Foundation/Developer of the Prime General Contractor shall be at the sole discretion of the Foundation/Developer and exempt from any and all preferential hiring policies. Selection and engagement by Foundation/Developer of all its consultants including but not limited to Owner's Representative Consulting Developer, various other professional consultants and professional disciplines in the field of Architecture, all Engineering disciplines, and all specialty design and engineering consultants shall be exempt from any and all preferential hiring policies and from hiring and bidding requirements and governmental regulations for projects that utilize public funding sources. Funds obtained by the Foundation/Developer through collateralization of any of the lands and/or improvements listed and described in Exhibit-A shall not be considered public funds. All funds from private sources including equity and debt funds collateralized by the lands of this agreement shall be fully segregated from any public funds received for development of this Project. If necessary to facilitate the conditions of this paragraph, all compensation in the form of fees, negotiated percentages, salaries, or other forms of compensation for services shall be paid to the Prime General Contractor and the various consultants listed herein using private funds only.
14. **The Project** shall be a multi-use themed complex. Any final Project proposed for the development shall include elements to encompass Jackson Family history including a Jackson Family Museum & Cultural Center, a Michael Jackson Memorial Pavilion, and a Michael Jackson Performing Arts Center & Concert Hall. Additionally, the development is planned to include commercial elements including but not limited to fine and casual dining, retail stores, entertainment, hotel accommodations, theaters, parking, nightlife, and a casino at a future date contingent on obtaining a license. Other elements under consideration include a conference center, renovation of the existing sports stadiums, enhancement of parks, an arboretum, renovation of the golf courses and facilities associated with the courses, and a possible residential component if appropriate. The list of elements to be included in this development will be adjusted and refined through a comprehensive feasibility study and land use planning process to explore master plan program and design concepts to determine the highest and best use of the site. This will be undertaken in a manner that will be sensitive to environmental considerations and responsive to creating a development that is beneficial to the residents and City of Gary.

15. **Construction** on the Project shall begin upon completion of design plans, project approval, and construction permitting by the City and subsequent release of funding subject to issuance of final construction permits. The project shall be constructed in phases to be determined. The Developer shall proceed with development of the plans and application for approvals as expeditiously as is reasonable commensurate with the nature of this project and as would be typical with industry standards. A preliminary construction schedule shall be submitted upon completion of the Schematic Design Phase and shall be updated at completion of the Design Development Phase, the Construction Document Phase, and the Contract for Construction Bidding and Negotiation Phase. A final construction Schedule shall be submitted upon execution of a Contract for Construction with the Prime General Contractor as developed in collaboration with the contractor, subject to typical industry standard allowances for time extensions based on weather and any other conditions beyond the control of the contractor.
16. **Master Plan Program:** It is the intention of the Foundation/Developer to design and implement the development and construction of the Project in general conformance with the description submitted herein. Foundation/Developer will design the Master Plan Program to create a project that is financially viable and feasible and that falls within the constraints that will be discovered and defined during the Feasibility Study Process. The Feasibility Study Process will determine the highest and best use of the certain lands and existing improvements thereon described in Exhibit-A and determine the most appropriate and feasible program for renovation and new construction on these lands. Any final project, which must be agreed to by the Parties, will include a Jackson Family Museum and Cultural Center, a Michael Jackson Performing Arts Center and Concert Hall, and a Michael Jackson Memorial Pavilion. The feasibility study shall be made available the City for full review. City shall not unreasonably withhold agreement and/or approval of an application for Planning Permits via a Development Agreement as described herein for a reasonable Master Plan Program and Design that is presented by the Foundation/Developer as informed by the feasibility study.
17. **City, Foundation and Developer** acknowledge that the final Master Plan and Program may change from the proposed Project as generally described herein for reasons other than conclusions developed after completion of the feasibility study. Additionally, the Foundation/Developer may elect to expand the initial approved program during the ensuing time when the project is under construction or after completion of construction of the initial Project. City shall not unreasonably withhold agreement and/or approval of an application for Planning Permits via a Development Agreement as described herein for a reasonable Master Plan Program and Design that is presented by the Foundation/Developer, or, for expansion of the Project as may be proposed and submitted by the Foundation/Developer for approval by the City through the normal application and approval procedures.
18. **Performance:** Foundation/Developer agree that certain time parameters, benchmarks and contingencies will be established for implementation and completion of the Project. City and Foundation/Developer agree and acknowledge that establishment of initial schedules and dates for expected performance are subject to future circumstances that can influence performance dates. City and Foundation/Developer acknowledge that to reach a point in time at which performance dates can be established with reasonable accuracy as per industry standards will require substantial

advancement of plans, work with cost estimating and logistics consultants, and collaboration with General Contractors who will need to take into consideration multiple aspects for this project including but not limited to the intent to implement the Preferential Hiring Policy described above. To reach a point in time when plans can be advanced and commitments can be obtained from a Prime General Contractor for firm performance dates will require substantial expenditure of funds by the Foundation/Developer in an amount that is expected to exceed the sum of ten million dollars. Developer affirms that it will work in good faith to advance the design and development of the Project at a pace commensurate with industry standards and with the nature and complexity of the Project And that a construction schedule shall thereupon be submitted to the City at the earliest opportunity in accordance with the constraints described herein.

19. **Start of Construction:** The start date for construction will be contingent upon first obtaining final City and Planning approval of a proposed project and then upon the architectural and engineering team having appropriate time to complete construction documents and obtain building permits. The length of time that it may take to obtain final Planning and City approval is difficult to determine due to many variables, including but not limited to the condition that the lands of Exhibit-A attached may require re-zoning to accommodate development of the final project as may be proposed and agreed to by the Parties, that the project may require working with third parties such as the Army Corp of Engineers, that it may be necessary to conduct multiple public hearings more than may be typical, and that it may be necessary to perform extensive environmental impact report studies due to the setting of the site that includes both wetlands and the Calumet River. However, it is the intent of the City and of the Foundation/Developer to reach the point of start of construction as expeditiously and as responsibly as possible. This clause of the Agreement sets out incentives for both Parties to perform to achieve this goal as follows: [1] If the Developer does not start construction of the Project within two (2) years of Close of Escrow for this Agreement, subject to additional time for extensions as described in this Agreement, or, within one (1) year of obtaining final Planning and City approval for the Project, whichever time period is greater, then the tax exempt status held by the Foundation shall temporarily lapse until such time as construction begins and the lands and improvements listed in Exhibit-A shall become subject to tax assessment. [2] If the Developer does not start construction of the Project within thirty (30) months of Close of Escrow for this Agreement, subject to additional time for extensions as described in this Agreement, or, within eighteen (18) months of obtaining final Planning and City approval for the Project, whichever time period is greater, then the tax exempt status held by the Foundation for the entire period subsequent to Close of Escrow shall be rescinded retroactively and the Developer shall be subject to back taxes for the time period starting from said Close of Escrow. Upon start of construction on the Project, the terms and conditions for tax exempt status set out above shall be reinstated. [3] If the Developer does not start construction of the Project within three (3) years of Close of Escrow for this Agreement, subject to additional time for extensions as described in this Agreement, or, within two (2) years of obtaining final Planning and City approval for the Project, whichever time period is greater, then the Foundation/Developer agrees to re-convey all parcels transferred herein and outlined in Exhibit-A by re-conveyance to the City without further operation of law and without liens or encumbrances.
20. **Preliminary Construction Schedule:** Developer will implement a plan to complete the design, permitting and substantial completion of construction of the Project on a time line basis not to exceed five (5) years from the date of Close of Escrow for this

Agreement. This five year time line shall be subject to extensions under the following conditions including but not limited to: [1] that there will be a requirement of a full Environmental Impact Report (EIR) as part of the approval process for the project, [2] other circumstances that may occur that can not reasonably be foreseen at this juncture such as delays caused by any appeals, challenges, or lawsuits brought against the City in regards to approval or advancement of the project prior to the time of final unchallenged issuance of Planning Approval and/or Building Permits. [3] Any other delays not the fault of the Developer or Construction Contractor that are at this time unforeseen. The five-year substantial completion of construction date shall be extended by that delay time, if any, caused by the conditions stated herein. Alternately, if conditions, requirements and delays beyond the control of the Developer occur during the process to obtain final Planning and City approval for the Project that would not provide for a minimum of forty-two (42) months from final approval to reach substantial completion of construction for the project, then the Developer will implement a plan to reach substantial completion within forty-two (42) months from obtaining Planning and City Approval of the final Project agreed to by the Parties. This 42 month time period shall be subject to further extension for unforeseen delays if said delays are not the fault of the Developer or the General Contractor.

21. **Tax Exempt Status:** Subsequent to the transfer of the Lands and Improvements articulated in Exhibit-A from the City to the Foundation, said lands and improvements shall be held by the Foundation and have tax exempt status for a limited time period not to exceed five (5) years, subject to extensions as outlined herein, or, for a time period not to exceed forty-two (42) months from obtaining final Planning and City approval for the Project subject to extensions described herein, whichever time period is greater. Parties agree that as each phase of the Development reaches completion, Foundation shall transfer the completed projects and parcels to the Developer. The various individual parcels of said lands shall be divided and/or consolidated to relate to the individual elements constructed upon them per the final Project program. Prior to or at such time as individual elements of the Project are: [1] completed and approved for occupancy by the City Building Department, whether on a phased completion basis or as a whole for the entire project; and [2] brought into commercial operation status, then, at such time as these conditions occur all interests held by the Foundation in the lands and new improvements thereon shall be fully transferred to the For-Profit Developer by the Foundation. Thereafter the Foundation will no longer hold any interest in title to said lands or improvements. The lands, improvements, and associated business operations other than non-profit operations by the Foundation shall cease to be tax exempt upon said transfer of interests by the Foundation. In the event construction of the Project or individual elements of the Project program are not substantially completed within a five (5) year time period from Close of Escrow for this Agreement subject to time allowed for extensions as described elsewhere in this Agreement, or, a time period not to exceed forty-two (42) months from obtaining final Planning and City approval for the Project subject to extensions as described herein, whichever time period is greater, then the tax exempt status prior to commencement of commercial operations as set out herein shall cease. The City shall be entitled to assess and collect applicable taxes on the lands associated with any remaining element not yet completed and launched into commercial operation.

22. **Transfer of Property and Improvements:** The instrument for Transfer of the property and improvements of Exhibit-A shall be by Deed of Trust from City to Foundation as per the applicable laws of the State of Indiana relating to transfer of public lands to an Indiana nonprofit corporation with IRS 501(c) (3) status. Close of

Escrow (COE) shall be within 30 days of execution of this Agreement by the Parties. The Parties shall provide the Escrow Holder all necessary documents and execute all necessary signatures to facilitate Close of Escrow for the transfer of the lands and improvements as described in this Agreement in a timely manner to facilitate the 30 day close. Time is of the essence, however, if unforeseen conditions exist that will require an extension of the 30 day time period for COE, then the Parties shall execute the necessary documents to extend the date of COE as may be required subject to contingencies set out in this Agreement reserved by the Parties for termination of this Agreement and cancellation of Escrow.

23. **Clear Transfer of Title:** Transfer by the City of the certain lands and improvements enumerated in Exhibit-A shall be made to the Developer by means described above in a condition free and clear of any and all encumbrances. City affirms that it is the sole owner of the Lands and Improvements described in Exhibit-A and that it is conducting its due diligence to determine whether any releases and/or consents are required to facilitate transfer to the Foundation free and clear of any and all encumbrances. If the City cannot facilitate transfer of title free and clear of any and all encumbrances within the time period allotted herein for Close of Escrow, then the Foundation/Developer may elect, in writing, to extend or withdraw from this Agreement. Any request by the City for an extension of Close of Escrow for additional time to remove any encumbrances shall be made to the Foundation/Developer in writing. Foundation/Developer will consider extending the Close of Escrow based on this request.
24. Upon completion of the feasibility study phase and acquisition phase for contingent letters of commitment for commercially reasonable equity and debt financing, Foundation/Developer shall make an election, in writing, to either proceed with development of the Project in substantial conformance with the Project as it is described generally herein, or to propose a revised Master Plan and Program that will require additional review and approval by the City. The Project as generally described herein shall be that Project or a revised Project that has been developed and agreed to by the Parties in context with the terms and conditions set out in paragraphs 16 and 17 of this Agreement. Upon the Foundation/Developer's election to proceed with the development of the Project either in substantial conformance with the original Project program or with City approval of a revised Project program, and upon initiation of the full scope of design and engineering work for the Project, the Project shall be considered and agreed by the Parties to be vested by the Foundation/Developer. Developer shall provide evidence of commercially reasonable contingent letters of financing commitments and a preliminary schedule for performance of design through construction of the final Project at the time of said election to proceed.
25. **Rights of Ownership:** Upon Close of Escrow, Foundation/Developer shall hold and enjoy full rights of ownership of the transferred Assets subject to the terms and conditions of this Agreement.
26. **Assignment of Assets for Financing:** The tax exempt Foundation may assign its rights to the assets of lands and improvements thereon as described in Exhibit-A to the for-profit Developer for the purposes of providing equity for the Developer to obtain commercially reasonable financing for the purposes of advancing the Project. Said assignment shall not negate the tax-exempt status terms and conditions described in above paragraphs of this Agreement or any other terms and conditions of this Agreement, as allowed by law. Any other assignment, sale, transfer or lease of the parcels articulated in Exhibit A must have the express written consent of the City prior to substantial completion of construction of the Project as per paragraph 29 of this

Agreement. Upon substantial completion of individual elements of the Project, these elements may be assigned, sold, transferred or leased without consent of the City.

27. **Foundation/Developer** shall be solely responsible for the feasibility study, Master Plan development, architectural design, engineering, construction of the Project, project management, construction financing, sales and marketing, accounting, developer services and any other functions necessary to complete all aspects of the Project and maintain ongoing operations.
28. **Collateralization of the Assets:** Foundation/Developer may encumber the land and existing improvement assets described in Exhibit A under commercially reasonable terms at any time after Close of Escrow for this Real Estate Agreement for the purposes of advancing this Project. Funds gained through the collateralization of the parcels contained within Exhibit A must be used by Foundation/Developer on this Project. Election to accept commercially reasonable financing offered to the Developer shall be at the sole discretion of the Developer.
29. **Prior to Completion of Construction of any individual** element of the Project or the Project as a whole, Developer and Foundation may transfer, sell, convey or lease any of the Lands or Improvements thereon described in Exhibit-A that is/are the basis for any aspect of the Project outlined herein only with the express written consent of the City. City will consider such transfer, sale, conveyance, or lease under the following explicit conditions: [1.] such transfer, sale, conveyance or lease is internal to the organization of the Foundation/Developer and is for internal, legal, and operational purposes only rather than transfer to a third party or third party entity, or, [2.] such transfer, sale, conveyance or lease would be for the advancement of the Project as a whole as defined and agreed upon by City and Foundation/Developer as per a Development Agreement approved upon completion of a Planning Approval Application Process; or [3.] that any agreements for such transfer, sale, conveyance or lease would obligate the beneficiary of such transfer, sale, conveyance or lease to fulfill the obligations, intent and requirements of this original Real Estate Agreement to advance and complete any part of the Project associated with the transfer, sale, conveyance or lease action; and [4.] any such transfer, sale, conveyance, or lease will be with the explicit requirement that if a transaction is to be made to an outside third party entity that the entity be obligated and financially capable of fulfilling the terms and conditions of this Agreement including the construction completion schedule, and that a for-profit entity/buyer/transferee hold title to the applicable parcels and improvements such that the lands and improvements thereon would be taxable as per the conditions set out in above paragraphs of this Agreement; and [5.] any such transfer, sale, conveyance or lease will be made fully transparent to the City for complete review and made only with the City's express written consent that will not be unreasonably withheld if the reason for such transfer, sale, conveyance or lease complies with the terms and conditions specified herein and the City is not materially harmed by the transaction. City agrees to review any written request by Developer and Foundation to obtain City consent to a transfer, sale, conveyance, or lease as described herein in a timely manner.
30. **Subsequent to Completion of Construction** of any individual element of the Project or the Project as a whole, Developer may elect to transfer, sell, convey or lease any of the Lands described in Exhibit-A that is/are the basis for any aspect of the Project outlined herein including the newly constructed elements, or the renovated improvements thereon, at its sole discretion, either individually or, the Project in its entirety if the entire Project has achieved completion of construction.

31. **Final Project:** The final Project shall be that Project Master Plan and Program that has been agreed to by the Parties as provided for in this Agreement, and that is submitted to the City for Planning Approval and ratified by execution of a Development Agreement by the Parties as has been further described in this Agreement. Any subsequent changes proposed to the Project other than those allowed for in the Development Agreement will require processing of the proposed changes through the City permitting process and with express written consent of the City.
32. **Foundation/Developer** shall not assign any of its rights or duties under this agreement without the express written consent of the City subject to all other terms and conditions of this agreement and except as allowed for by other terms and conditions of this agreement.
33. **City** shall not assign any of its rights or duties under this agreement without the express written consent of the Foundation/Developer subject to all other terms and conditions of this agreement and except as allowed for by other terms and conditions of this agreement.
34. **Developer** shall indemnify and hold harmless the City of Gary and City of Gary Department of Redevelopment, any of its officers, employees, or assigns from any liability whatsoever arising out of Developer's actions and conduct which arises out of this Project, this Agreement and any subsequent agreements between the parties, provided that [1.] said liability is attributable to the actions and conduct of the Developer and liability for damage, loss or expenses is not due in part to negligence or actions and conduct of the party seeking indemnification, and [2] that such liability is not that which would normally fall to the City in performing its duties and obligations as a governing body regarding any aspect of the Project. Liability that would normally be that of the City in performing its duties and obligations as a governing body, in whole or in part as related to any claim for damages arising out of actions by the Foundation /Developer shall not be indemnified under this paragraph.
35. The Parties to this Agreement were previously engaged in similar negotiations and the development of an agreement similar to this Agreement regarding the transfer of approximately twelve acres of land plus existing improvements including the Adam Benjamin Transit Center, the Genesis Center, and associated parking structures located and generally bounded by West 3rd Avenue and the elevated railroad alignment to the North, Broadway to the East, West 5th Avenue to the South, and Adams Street to the West. The approximate 12 acres of the previous agreement was replaced herein by the approximate 300 acres that is the subject of this Agreement. In the event that the City elects to sell or otherwise transfer the said 12 acres and associated improvements thereon, then the City hereby grants to the Foundation/Developer first right of refusal to purchase the said 12 acres and improvements and to present a development program to facilitate transfer of the lands and improvements from the City to the Foundation/Developer in a manner to be negotiated between the parties hereto.

B. RESPONSIBILITIES OF CITY:

1. **City** owns or controls certain real estate and improvements more fully described in Exhibit-A that will be the location for the Project.

2. City agrees to transfer title of the parcels more fully described in Exhibit-A to Foundation by Deed of Trust, said parcels being necessary for all aspects of the Project.
3. Said transfer of the certain lands and improvements of Exhibit-A from the City to Foundation shall be for the sole purpose of development and construction of the Project as generally described herein and as may be further adjusted and developed through the comprehensive feasibility study and master plan development process and as otherwise provided for in this Agreement. Foundation/Developer agree that this purpose of use shall be a condition of the transfer of said lands by City to Foundation and that it shall be the obligation of the Foundation/Developer to implement a plan of action to fulfill this purpose as set out herein subject to all other terms and condition of this Agreement.
4. Upon Transfer of Title to Foundation said parcels and improvements thereon shall be subject only to future taxes and assessments, current covenants, easements and restrictions of record; applicable building codes and zoning ordinances, and other matters of record. Other than the items that are articulated herein, the transfer of the property shall be "as is", with no other warranties from the City.
5. Prior to transfer of Title, City shall remove or cure any past due back taxes or assessments, if any, against the properties owned by City that are the subject of this Agreement, or, otherwise remain responsible for, or transfer the ongoing liability for said taxes or assessments to the City such that Foundation/Developer shall not be responsible for said taxes or assessments and that the lands shall not thereafter be security for said taxes or assessments.
6. City affirms that it has the legal right to enter into this Agreement and that it can perform its obligations under this Agreement to transfer the lands and improvements thereon that are the subject of this Agreement to the Foundation subject to any releases or consents by other parties or entities, whether public, governmental, or private, Federal, State, or Local. City shall facilitate transfer of title by Deed of Trust to the Foundation free and clear of any and all encumbrances or restrictions.
7. Foundation/Developer may be required to seek rezoning to accommodate and facilitate development of the Project . City agrees to assist Foundation/Developer as possible to facilitate any required rezoning in light of the results of the feasibility study and master plan.
8. City makes no warranties about the real estate transferred pursuant to this Agreement and more fully described in Exhibit A.
9. City warrants that it is not aware of any contamination by hazardous materials and substances affecting the land and/or improvements more fully described in Exhibit A and that if it is aware of hazardous materials or substances that this information will be made available and presented to Developer/Foundation. Subsequent to execution of this Agreement if the Foundation/Developer discover contamination of which the cost and time required for remediation would be judged to be too prohibitive for the Project to be undertaken, then Foundation/Developer may terminate this agreement or any subsequent agreement regarding the Project subject to the additional pertinent conditions contained in this Agreement, including but not limited to re-conveyance of all parcels articulated in Exhibit-A back to the City without lien or encumbrance and without further operation of law.

10. City, without prejudice, shall use its best efforts to support the Project and assist the Foundation/Developer in its financing efforts.
11. City will cooperate with the Developer's representatives, consultants, architects, engineers and others in their development of the Final Master Plan and completion of the feasibility study.

C. TERMINATION AND DEFAULT

1. Parties hereto acknowledge that time is of the essence for this Project, Agreement and subsequent agreements contemplated between the parties.
2. Foundation/Developer shall not proceed with implementation of the Feasibility Study until Close of Escrow, and, all start times regarding projected or anticipated schedules, shall not be begin the run until such time as the City fulfills its obligations under this Agreement to transfer the lands and improvements thereon to Foundation free and clear of all encumbrances.

D. MISCELLANEOUS TERMS

1. **Governing Law:** This Agreement and all subsequent agreements negotiated between the parties hereto shall be governed by and construed in accordance with the laws of the State of Indiana. Should legal action be required, any cause of action shall be filed in the Superior Court of Lake County, Lake County, Indiana.
2. **Assignability:** The rights and duties set forth herein and in any subsequent agreement between the parties shall be binding on any successors, heirs, executors, administrators, legal representatives or assigns of the parties hereto.
3. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executor, administrators, successors and assigns.
4. **Entire Agreement/Amendment:** This Agreement sets forth the entire agreement and understanding of the parties as to the subject matter hereof, and supersedes any prior oral or written understandings or agreements. This Agreement may not be modified or amended except by the express written agreement of the parties hereto. Parties agree that additional agreements may be required between the parties to effectuate the phases of this agreement, subject to conditions contained herein.
5. **Severability:** In the event any parts of this Agreement are found to be invalid, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the invalid parts were deleted.
6. **Waiver of Provisions:** No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the person or party against whom it is charged.
7. **Costs:** Each party shall be solely responsible for all costs and expenses incurred by such party in performing its duties under this Agreement. No party hereto shall have the ability to bind any other party to any debts, obligations, liabilities, expenses or contracts of the other.

8. **Independent Entity:** Foundation and Developer shall act as an independent entity and not as an employee, partner or agent of the City.
9. **Notices:** Any notice or other writing to be served pursuant to this Agreement and subsequent agreements between the parties shall be deemed served when same shall be deposited in registered, certified or overnight mail or by personal service at the address provided below:

City: Office of the Mayor
401 Broadway, 2nd Floor
Gary, IN

Developer and Foundation: Jackson Development & Marketing Corporation
P.O. Box 15187
Las Vegas, NV 89114

10. **Waiver of Default:** No waiver of any default of either party shall be implied from any delay or omission to take any action on account of such default, and no express waiver shall affect any default other than the default specified in the express waiver and even then only for the time and to the extent therein stated. One or more waivers by a party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.
11. **Exclusive Dealing:** The parties understand that this Agreement is exclusive to the Foundation/Developer and the City shall not seek another developer to work on the Project unless there is a default which cannot be remedied as outlined herein or in any subsequent agreement between the parties.
12. **Access:** Developer and its representatives shall have reasonable access to the properties, procedures and City records which are required for all aspects of this Project, including the feasibility study and master plan, and as needed to conduct its due diligence.
13. **Conditions of Closing:** This Agreement shall be subject to customary conditions of closing Regarding Close of Escrow for this Agreement.
14. **Close of Escrow** shall occur no later than thirty (30) days from execution of this Agreement by the Parties.

EXHIBIT-A
PROPERTY DESCRIPTIONS

EXHIBIT A

1. 30 TH AVE & BROADWAY, Gary, Indiana 46402. Parcel Number 450821200002000004 Key Number 25-40-0073-0002. City of Gary-- owner. Legal description: S.540 FT. OF N.720 FT. OF E. 3/4 EX. E. 50 FT. OF E. 3/4 S.21 T.36 R.8 CONT'G 50.857 A. SUBJ. TO R-W

2. 3200 BROADWAY GLEASO, Gary, Indiana 46402. Parcel 450821200003000004 Key Number 25-40-0073-0004. City of Gary -- owner. Legal description: PT. SEC. N. OF MEANDER LINE S.21 T.36 R.8 188.513 AC. SUBJ. TO R-W SUBJ. TO EASEMENT & VAC. WASH ST. & ALLEY 1 W BETWEEN 33RD AVE & INTERSTATE 94 (BORMAN EXPRESSWAY)

3. 33 RD & HARR GLEASON, Gary, Indiana 46402. Parcel 450321401001000004 Key Number 25-40-0073-0005. City of Gary-- owner. Legal description: PT. GOV. LOTS 2 & 3 N. OF 35TH AVE. E1/2 SEC. 52.15A. S.21 T.36 R.8

4. 3200 HARR GILROY STA, Gary, Indiana 46402. Parcel 450821176001000004 Key Number 25-40-0073-0006. City of Gary-- owner. Legal description: PT. NW. & PT. NE. S.21 T.36 R.8 30 AC.